

HOUSE BILL 3378  
By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 12, relative to state contract liability.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-3-315, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) The rules and regulations shall also allow the commissioner to authorize negotiation of a limitation on a contractor's liability in circumstances where the applicable procurement process has failed to provide a qualified bidder.

SECTION 2. Tennessee Code Annotated, Section 12-3-315, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c)

(1) Except for personal injury or death, total liability of a contractor, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, shall be limited to the direct damages recoverable under law, but not to exceed two times (2x) the contract value. Neither the contractor nor the state shall be liable to the other party for incidental or consequential damages.

Notwithstanding any provision of this subsection to the contrary, any provision or provisions of this subsection shall not apply to the extent it is determined by a court of competent jurisdiction, including appellate review if pursued, to violate the law or constitution of the state of Tennessee; provided that a contractor does not warrant that the execution of a contract, or its delivery or performance, complies in any way with such laws as the same may govern limitation of liability agreements.

(2) Notwithstanding the provisions of subdivision (1), the commissioner is authorized to negotiate a lower limitation of liability provision, if in the commissioner's discretion, the contract or purchase is of such a size or quantity as to make such negotiation necessary to obtain a competitive bid.

SECTION 3. Tennessee Code Annotated, Section 12-4-119, is amended by deleting the subsection (c) in its entirety, and by substituting instead the following language:

(c)

(1) Except for personal injury or death, total liability of a contractor, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, shall be limited to the direct damages recoverable under law, but not to exceed two times (2x) the contract value. Neither the contractor nor the state shall be liable to the other party for incidental or consequential damages.

Notwithstanding any provision of this subsection to the contrary, any provision or provisions of this subsection shall not apply to the extent it is determined by a court of competent jurisdiction, including appellate review if pursued, to violate the law or constitution of the state of Tennessee; provided that a contractor does not warrant that the execution of a contract, or its delivery or performance, complies in any way with such laws as the same may govern limitation of liability agreements.

(2) Notwithstanding the provisions of subdivision (1), the commissioner is authorized to negotiate a lower limitation of liability provision, if in the commissioner's discretion, the contract or purchase is of such a size or quantity as to make such negotiation necessary to obtain a competitive bid.

SECTION 4. Tennessee Code Annotated, Section 12-4-119, is amended by deleting subsection (d) in its entirety.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.